



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2021-0569; FRL-10136-01-R4]

#### Air Plan Approval; TN; Updates to References to Appendix W Modeling Guideline

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by Tennessee, on April 9, 2021. Specifically, EPA is proposing to approve updates to the incorporation by reference of federal guidelines on air quality modeling in the Tennessee SIP. Based on its proposal to approve this revision, EPA is also proposing to convert the previous conditional approval regarding infrastructure SIP prevention of significant deterioration (PSD) elements for the 2015 Ozone National Ambient Air Quality Standard (NAAQS) for Tennessee to a full approval. EPA is proposing to approve this revision pursuant to the Clean Air Act (CAA or Act).

**DATES:** Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2021-0569 at [www.regulations.gov](https://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or

comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit [www.epa.gov/dockets](http://www.epa.gov/dockets).

**FOR FURTHER INFORMATION CONTACT:** Josue Ortiz Borrero, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8085. Mr. Ortiz Borrero can also be reached via electronic mail at staff email [ortizborrero.josue@epa.gov](mailto:ortizborrero.josue@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On October 1, 2015, EPA promulgated a revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. *See* 80 FR 65292 (October 26, 2015). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an “infrastructure SIP” or “iSIP.” States were required to submit such SIP revisions for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.<sup>1</sup>

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<sup>1</sup> In infrastructure SIP submissions, states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

On September 13, 2018, Tennessee met the requirement to submit an iSIP for the 2015 8-hour ozone NAAQS by the October 1, 2018, deadline. Through previous rulemakings, EPA approved most of the infrastructure SIP elements for the 2015 Ozone NAAQS for Tennessee.<sup>2,3</sup> However, regarding the PSD elements of section 110(a)(2)(C), (D)(i)(II) (prong 3), and (J) (herein referred to as element C, Prong 3, and element J, respectively), EPA conditionally approved<sup>4</sup> these portions of Tennessee's iSIP submission because of outdated references to the federal guideline on air quality modeling found in Appendix W of 40 CFR, Part 51.<sup>5</sup> As previously mentioned, all other applicable iSIP requirements for Tennessee for the 2015 8-hour ozone NAAQS were addressed or will be addressed in separate rulemakings.

For elements C and J to be approved for PSD, a state needs to demonstrate that its SIP meets the PSD-related infrastructure requirements of these sections. These requirements are met if the state's implementation plan includes a PSD program that meets current federal requirements. Prong 3 is also approvable when a state's implementation plan contains a fully approved, up-to-date PSD program. EPA's PSD regulations at 40 CFR 51.166(l) require that modeling be conducted in accordance with Appendix W, *Guideline on Air Quality Models*. EPA promulgated the most current version of Appendix W on January 17, 2017 (82 FR 5182). Therefore, in order to approve the iSIP PSD elements for the 2015 8-hour ozone NAAQS, PSD regulations in SIPs are required to reference the most current version of Appendix W. As discussed in the conditional approval for the 2015 ozone iSIP PSD elements, Tennessee's SIP contained outdated references to Appendix W and the State committed to update the outdated references and submit a SIP revision within one year of EPA's final rule conditionally approving

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<sup>2</sup> EPA approved most elements for Tennessee, except for the Interstate Transport provisions (Prongs 1 & 2), and the PSD provisions (element C, Prong 3, and J), on December 26, 2019. See 84 FR 70895.

<sup>3</sup> The Interstate Transport provisions (Prongs 1 & 2) for Tennessee have been proposed for disapproval but that action has not been finalized at this time. See 87 FR 9545 (February 22, 2022).

<sup>4</sup> Under CAA section 110(k)(4), EPA may conditionally approve a SIP revision based on a commitment from a state to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. If the state fails to meet the commitment within one year of the final conditional approval, the conditional approval will be treated as a disapproval and EPA will issue a finding of disapproval.

<sup>5</sup> For the state of Tennessee, EPA conditionally approved the PSD provisions of element C, Prong 3, and element J, on April 9, 2020. See 85 FR 19888.

these PSD elements. Accordingly, Tennessee was required to submit a SIP revision by April 9, 2021. Tennessee met its commitment by submitting a SIP revision to correct the deficiencies on or before the deadline. Through this Notice of Proposed Rulemaking (NPRM), EPA is now proposing to approve changes to the Tennessee SIP and to convert the conditional approval to a full approval for Tennessee regarding element C, Prong 3, and element J, for the 2015 8-hour ozone NAAQS infrastructure SIP.

## **II. What is EPA's Approach to the Review of Infrastructure SIP Submissions?**

As discussed above, whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to submit infrastructure SIPs that meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.<sup>6</sup> Unless otherwise noted below, EPA is following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's implementation plan for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.<sup>7</sup> EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

## **III. EPA's Analysis of Tennessee's April 9, 2021, Submittal**

On April 9, 2021, Tennessee submitted a SIP revision to address outdated references to EPA's modeling guidelines in order to meet the PSD iSIP requirements for the 2015 8-hour ozone NAAQS. The SIP revision includes changes to two SIP-approved rules to update the

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<sup>6</sup> EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at [https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance\\_on\\_Infrastructure\\_SIP\\_Elements\\_Multipollutant\\_FINAL\\_Sept\\_2013.pdf](https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf)), as well as in numerous agency actions, including EPA's prior action on the Tennessee infrastructure SIP to address the 2010 Sulfur Dioxide NAAQS. *See* 81 FR 8540 (November 28, 2016).

<sup>7</sup> *See* *Mont. Env'tl. Info. Ctr. v. Thomas*, 902 F.3d 971 (9th Cir. 2018).

incorporation by reference date for Appendix W and a request to convert the April 9, 2020, Conditional Approval of element C, Prong 3, and element J of Tennessee’s 2015 8-hour ozone NAAQS infrastructure SIP to a full approval. Specifically, the April 9, 2021, SIP revision makes changes to Tennessee Rules 1200-03-09-.01, *Construction Permits*, and 1200-03-21-.01, *General Alternate Emission Standard*.

Paragraph 1200-03-09-.01(1) is a set of general construction permitting requirements that apply to new or modified sources, including sources subject to PSD, and subparagraph (f) requires estimates of ambient concentration to be based on air quality models. Previously, this provision referenced EPA publication No. 450/2-78-027R, “Guidelines on Air Quality Models (revised)” (1986), and certain specified supplements for modeling. However, the April 9, 2021, SIP revision deletes this reference to EPA publication No. 450/2-78-027R and replaces it with a specific incorporation by reference of 40 CFR Part 51 Appendix W, as published in the July 1, 2019, edition of the Code of Federal Regulations (CFR). This provision currently allows the Technical Secretary to approve the use of a modified or substitute model on a case-by-case basis after consultation with and written approval by EPA, and is revised to limit the use of a modified or substitute model to incidences where the air quality model in Appendix W is inappropriate, which is consistent with 40 CFR 51.166(l)(2) for PSD. Tennessee also changed the word “another” to “substituted” in the model substitution provision. The changes to Paragraph 1200-03-09-.01(1)(f) align with federal requirements to make use of the most current version of Appendix W.

In addition, modeling requirements under the State’s PSD rule at Paragraph 1200-03-09-.01(4)(k) are revised to similarly include an incorporation by reference date for Appendix W of the July 1, 2019, CFR publication edition, and includes the same minor edit to change “another” to “substituted”.

Lastly, Paragraph 1200-03-21-.01(2)(c), which provides procedures for alternative emission standards, is also revised to delete a reference to EPA publication No. 450/2-78-027R

and replace it with a specific incorporation by reference of 40 CFR Part 51 Appendix W, as published in the July 1, 2019, edition of the CFR, as in Rule 1200-03-09-.01 described above.

As explained in the April 9, 2020, conditional approval, Tennessee committed to update its PSD regulations to reference the most current version of Appendix W. EPA approved the most current version of Appendix W on January 17, 2017 (82 FR 5182), so by incorporating by reference the July 1, 2019, version of Appendix W into the SIP, Tennessee is meeting the commitment of the conditional approval, as well as the requirements of the PSD elements for the 2015 8-hour ozone infrastructure SIP.

For the reasons stated above, EPA is proposing to approve the changes into the Tennessee SIP and convert the April 9, 2020, conditional approval of element C, Prong 3, and element J, of Tennessee's 2015 8-hour ozone NAAQS infrastructure SIP to a full approval.

#### **IV. Incorporation by Reference**

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Tennessee Rules 1200-03-09-.01, *Construction Permits*,<sup>8</sup> and 1200-03-21-.01, *General Alternate Emission Standard*, state effective on April 22, 2021. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

#### **V. Proposed Action**

EPA is proposing to approve changes to the Tennessee SIP, and convert the conditional approval for element C, Prong 3, and element J, for the 2015 8-hour ozone Infrastructure SIP to a

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<sup>8</sup> EPA is not proposing to incorporate the April 22, 2021, state effective version of: 1200-03-09-.01(1)(a); 1200-03-09-.01(1)(d); 1200-03-09-.01(1)(h); 1200-03-09-.01(1)(j); 1200-03-09-.01(4)(a)7(vi); 1200-03-09-.01(4)(b)24(XVII); 1200-03-09-.01(4)(b)29; 1200-03-09-.01(4)(b)47(i)(IV); 1200-03-09-.01(4)(j)3; 1200-03-09-.01(4)(l)2(iii); 1200-03-09-.01(5)(b)1(x)(VII); the PM<sub>2.5</sub> annual and 24-hour averaging time as part of subparagraph 1200-03-09-.01(5)(b)1(xix); 1200-03-09-.01(5)(b)2(viii)(III); 1200-03-09-.01(5)2(iii)(II); and 1200-03-09-.01(5)(b)3(i)(III). These provisions are either not approved into the SIP or the April 22, 2021, version of the rule contains language changes that are not before EPA for approval into the SIP. If EPA finalizes this action, the Agency will update the SIP table at 40 CFR 52.2220(c) to reflect these exceptions.

full approval. Specifically, EPA is proposing to approve changes to Tennessee Rules 1200-03-09-.01, *Construction and Operating Permits*, and 1200-03-21-.01, *General Alternate Emission Standard*.

## **VI. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.



## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: August 18, 2022.

**Daniel Blackman,**  
*Regional Administrator,*  
*Region 4.*

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